



Rep. Sara Feigenholtz

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1 AMENDMENT TO SENATE BILL 3592

2 AMENDMENT NO. _____. Amend Senate Bill 3592, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Guardianship and Advocacy Act is amended by
6 changing Section 31 as follows:

7 (20 ILCS 3955/31) (from Ch. 91 1/2, par. 731)

8 Sec. 31. Appointment; availability of State Guardian;
9 available private guardian. The State Guardian shall not be
10 appointed if another suitable person is available and willing
11 to accept the guardianship appointment. In all cases where a
12 court appoints the State Guardian, the court shall indicate in
13 the order appointing the guardian as a finding of fact that no
14 other suitable and willing person could be found to accept the
15 guardianship appointment. On and after the effective date of
16 this amendatory Act of the 97th General Assembly, the court

1 shall also indicate in the order, as a finding of fact, the
2 reasons that the State Guardian appointment, rather than the
3 appointment of another interested party, is required. This
4 requirement shall be waived where the Office of State Guardian
5 petitions for its own appointment as guardian.

6 (Source: P.A. 89-396, eff. 8-20-95.)

7 Section 10. The Clerks of Courts Act is amended by adding
8 Section 27.3f as follows:

9 (705 ILCS 105/27.3f new)

10 Sec. 27.3f. Guardianship and advocacy operations fee.

11 (a) As used in this Section, "guardianship and advocacy"
12 means the guardianship and advocacy services provided by the
13 Guardianship and Advocacy Commission and defined in the
14 Guardianship and Advocacy Act. Viable public guardianship and
15 advocacy programs, including the public guardianship programs
16 created and supervised in probate proceedings in the Illinois
17 courts, are essential to the administration of justice and
18 ensure that incapacitated persons and their estates are
19 protected. To defray the expense of maintaining and operating
20 the divisions and programs of the Guardianship and Advocacy
21 Commission and to support viable guardianship and advocacy
22 programs throughout Illinois, each circuit court clerk shall
23 charge and collect a fee on all matters filed in probate cases
24 in accordance with this Section, but no fees shall be assessed

1 against the State Guardian, any State agency under the
2 jurisdiction of the Governor, any public guardian, or any
3 State's Attorney.

4 (b) No fee specified in this Section shall be imposed in
5 any minor guardianship established under Article XI of the
6 Probate Act of 1975, or against an indigent person. An indigent
7 person shall include any person who meets one or more of the
8 following criteria:

9 (1) He or she is receiving assistance under one or more
10 of the following public benefits programs: Supplemental
11 Security Income (SSI), Aid to the Aged, Blind, and Disabled
12 (AABD), Temporary Assistance for Needy Families (TANF),
13 Supplemental Nutrition Assistance Program (SNAP) (formerly
14 Food Stamps), General Assistance, State Transitional
15 Assistance, or State Children and Family Assistance.

16 (2) His or her available income is 125% or less of the
17 current poverty level as established by the United States
18 Department of Health and Human Services, unless the
19 applicant's assets that are not exempt under Part 9 or 10
20 of Article XII of the Code of Civil Procedure are of a
21 nature and value that the court determines that the
22 applicant is able to pay the fees, costs, and charges.

23 (3) He or she is, in the discretion of the court,
24 unable to proceed in an action without payment of fees,
25 costs, and charges and whose payment of those fees, costs,
26 and charges would result in substantial hardship to the

1 person or his or her family.

2 (4) He or she is an indigent person pursuant to Section
3 5-105.5 of the Code of Civil Procedure, providing that an
4 "indigent person" means a person whose income is 125% or
5 less of the current official federal poverty guidelines or
6 who is otherwise eligible to receive civil legal services
7 under the Legal Services Corporation Act of 1974.

8 (c) The clerk is entitled to receive the fee specified in
9 this Section, which shall be paid in advance, and managed by
10 the clerk as set out in paragraph (2), except that, for good
11 cause shown, the court may suspend, reduce, or release the
12 costs payable under this Section:

13 (1) For administration of the estate of a decedent
14 (whether testate or intestate) or of a missing person, a
15 fee of \$100.

16 (2) The guardianship and advocacy operations fee, as
17 outlined in this Section, shall be in addition to all other
18 fees and charges and assessable as costs. Five percent of
19 the fee shall be retained by the clerk for deposit into the
20 Circuit Court Clerk Operation and Administrative Fund to
21 defray costs of collection and 95% of the fee shall be
22 disbursed within 60 days after receipt by the circuit clerk
23 to the State Treasurer for deposit by the State Treasurer
24 into the Guardianship and Advocacy Fund.

25 Section 15. The Probate Act of 1975 is amended by changing

1 Sections 11a-12 and 11a-20 as follows:

2 (755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)
3 Sec. 11a-12. Order of appointment.)

4 (a) If basis for the appointment of a guardian as specified
5 in Section 11a-3 is not found, the court shall dismiss the
6 petition.

7 (b) If the respondent is adjudged to be disabled and to
8 lack some but not all of the ~~be totally without~~ capacity as
9 specified in Section 11a-3, and if the court finds that ~~limited~~
10 guardianship is necessary for the protection of ~~will not~~
11 ~~provide sufficient protection for~~ the disabled person, his or
12 her estate, or both, the court shall appoint a limited ~~plenary~~
13 guardian for the respondent's person or estate or both. The
14 court shall enter a written order stating the factual basis for
15 its findings and specifying the duties and powers of the
16 guardian and the legal disabilities to which the respondent is
17 subject.

18 (c) If the respondent is adjudged to be disabled and to be
19 totally without ~~lack some but not all of the~~ capacity as
20 specified in Section 11a-3, and if the court finds that limited
21 guardianship will not provide sufficient ~~is necessary for the~~
22 protection for ~~of~~ the disabled person, his or her estate, or
23 both, the court shall appoint a plenary guardian for ~~limited~~
24 ~~guardian of~~ the respondent's person or estate or both. The
25 court shall enter a written order stating the factual basis for

1 its findings ~~and specifying the duties and powers of the~~
2 ~~guardian and the legal disabilities to which the respondent is~~
3 ~~subject.~~

4 (d) The selection of the guardian shall be in the
5 discretion of the court, which shall give due consideration to
6 the preference of the disabled person as to a guardian, as well
7 as the qualifications of the proposed guardian, in making its
8 appointment.

9 (Source: P.A. 89-396, eff. 8-20-95.)

10 (755 ILCS 5/11a-20) (from Ch. 110 1/2, par. 11a-20)

11 Sec. 11a-20. Termination of adjudication of disability -
12 Revocation of letters - modification.) (a) Except as provided
13 in subsection (b-5), upon ~~Upon~~ the filing of a petition by or
14 on behalf of a disabled person or on its own motion, the court
15 may terminate the adjudication of disability of the ward,
16 revoke the letters of guardianship of the estate or person, or
17 both, or modify the duties of the guardian if the ward's
18 capacity to perform the tasks necessary for the care of his
19 person or the management of his estate has been demonstrated by
20 clear and convincing evidence. A report or testimony by a
21 licensed physician is not a prerequisite for termination,
22 revocation or modification of a guardianship order under this
23 subsection (a).

24 (b) Except as provided in subsection (b-5), a ~~A~~ request by
25 the ward or any other person on the ward's behalf, under this

1 Section may be communicated to the court or judge by any means,
2 including but not limited to informal letter, telephone call or
3 visit. Upon receipt of a request from the ward or another
4 person, the court may appoint a guardian ad litem to
5 investigate and report to the court concerning the allegations
6 made in conjunction with said request, and if the ward wishes
7 to terminate, revoke, or modify the guardianship order, to
8 prepare the ward's petition and to render such other services
9 as the court directs.

10 (b-5) Upon the filing of a verified petition by the
11 guardian of the disabled person or the disabled person, the
12 court may terminate the adjudication of disability of the ward,
13 revoke the letters of guardianship of the estate or person, or
14 both, or modify the duties of the guardian if: (i) a report
15 completed in accordance with subsection (a) of Section 11a-9
16 states that the disabled person is no longer in need of
17 guardianship or that the type and scope of guardianship should
18 be modified; (ii) the disabled person no longer wishes to be
19 under guardianship or desires that the type and scope of
20 guardianship be modified; and (iii) the guardian of the
21 disabled person states that it is in the best interest of the
22 disabled person to terminate the adjudication of disability of
23 the ward, revoke the letters of guardianship of the estate or
24 person, or both, or modify the duties of the guardian, and
25 provides the basis thereof. In a proceeding brought pursuant to
26 this subsection (b-5), the court may terminate the adjudication

1 of disability of the ward, revoke the letters of guardianship
2 of the estate or person, or both, or modify the duties of the
3 guardian, unless it has been demonstrated by clear and
4 convincing evidence that the ward is incapable of performing
5 the tasks necessary for the care of his or her person or the
6 management of his or her estate.

7 (c) Notice of the hearing on a petition under this Section,
8 together with a copy of the petition, shall be given to the
9 ward, unless he is the petitioner, and to each and every
10 guardian to whom letters of guardianship have been issued and
11 not revoked, not less than 14 days before the hearing.

12 (Source: P.A. 86-605.)".